

In the United States Court of Federal Claims

Nos. 18-862C, 18-872C, 18-873C, 18-889C, 18-894C, 18-895C, 18-901C, 18-946C
(consolidated)

(Filed: October 1, 2018)

***** *

FMS INVESTMENT CORP., *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant,

and

ALLTRAN EDUCATION, INC.,

Defendant-Intervenor.

***** *

Motion for Clarification; Scope of
Injunction.

ORDER

WHEELER, Judge.

On September 28, 2018, the Government submitted a motion for clarification of the permanent injunction issued by this Court on September 14, 2018. Specifically, the Government asks whether the Court intended “to enjoin the Department of Education from ever cancelling Solicitation ED-FSA-16-R-0009, regardless of whether a proper basis exists.” Dkt. No. 101 at 2. The Government points out that this Court’s September 14, 2018 Opinion identifies specific deficiencies in the administrative record and expresses an intent to return the procurement to its posture as of May 2, 2018, but that the literal language of the Order appears to permanently bar the Department of Education from cancelling the solicitation for any reason. Dkt. No. 101 at 1–2.

The Court clarifies that it intended only to enjoin the Department of Education from cancelling the solicitation based on the administrative record that it submitted in this proceeding. The Court's Order "merely restores the posture of the process before the illegal cancellation." Parcel 49C L.P. v. United States, 31 F.3d 1147, 1154 (Fed. Cir. 1994). The Department of Education "retains the power to proceed with the award process or to terminate the award process" for any legal, sufficiently supported reason. Id.

Accordingly, the Government's motion for clarification is GRANTED. The Court's September 14, 2018 Order is amended as follows: It is ORDERED that the United States of America, the United States Department of Education, and their officers, agents, servants, employees, and representatives are permanently ENJOINED, pursuant to RCFC 65(d), from cancelling Solicitation No. ED-FSA-16-R-0009 on the basis of the administrative record that the Department of Education relied on to justify its May 3, 2018 cancellation decision.

IT IS SO ORDERED.

s/ Thomas C. Wheeler
THOMAS C. WHEELER
Judge